Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Jonathan Bradford,

applicant,

and

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada) (now known as Unifor),

respondent.

Board File: 30191-C
Neutral Citation: 2014 CIRB **716**
March 5, 2014

Counsel of Record

Mr. Albertos Polizogopoulos, for Mr. Jonathan Bradford;

Ms. Piper Henderson, for National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada) (now known as Unifor).

A panel of the Canada Industrial Relations Board (the Board) composed of Ms. Elizabeth MacPherson, Chairperson, and Ms. Louise Fecteau and Mr. Patric F. Whyte, Vice-Chairpersons, has considered the above-cited application for reconsideration of a decision made by the Board on September 27, 2013, *Bradford*, 2013 CIRB 696 (RD 696). Having reviewed the documentation submitted by the parties, the Board is satisfied that the written record is sufficient and exercises its discretion pursuant to section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) to determine the application without an oral hearing.

I. Background

[1] Mr. Jonathan Bradford (the applicant) is an air traffic controller employed by NAV CANADA (the employer). He was hired in May 2010. In this capacity, he is a member of the bargaining unit represented by the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada), now known as Unifor (the union). By virtue of the collective agreement between the union and the employer, the applicant is obliged to be a member of the union and to pay union dues. In August 2012, he filed an application with the Board pursuant to section 70(2) of the *Code*, seeking exemption from union membership and the payment of union dues on the grounds of religious conviction or beliefs. In RD 696, the Board denied this application. On October 25, 2013, the applicant filed this application under section 18 of the *Code*, asking the Board to reconsider RD 696.

II. The Original Decision (RD 696)

[2] The Board held an oral hearing with respect to the original application, and heard *viva voce* testimony over a period of two days in May 2013. Ultimately, the Board was not satisfied that the applicant met all of the criteria necessary to warrant an exemption from union membership and the payment of union dues on the grounds of religious conviction or beliefs, as contemplated by section 70(2) of the *Code*. The rationale for the Board's decision is set out at paragraphs 26–42 of RD 696:

> [26] This is an application for exemption from union membership and payment of union dues, further to section 70(2) of the *Code*, which reads:
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> > 70.(2) Where the Board is satisfied that an employee, because of their religious conviction or beliefs, objects to joining a trade union or to paying regular union dues to a trade union, the Board may order that the provision in a collective agreement requiring, as a condition of employment, membership in a trade union or requiring the payment of regular union dues to a trade union does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from their wages, to a registered charity mutually agreed on by the employee and the trade union.
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> [27] In interpreting this section of the *Code*, the Board has set out five criteria that should be applied. The first four criteria were established in *Barker* (1986), 66 di 91; 13 CLRBR (NS) 28; and 86 CLLC 16,031 (CLRB no. 576), while the fifth was subsequently added in *Wiebe* (1987), 70 di 89; and 18 CLRBR (NS) 241; and 87 CLLC 16,032 (CLRB no. 632). They are:

1. The applicant must object to all trade unions and not one particular union.

2. The applicant does not have to rely on a specific tenet of a particular religion or church.

3. The Board must make an objective inquiry into the nature of the applicant's beliefs to determine whether they relate to the Divine, or man's perceived relationship to the Divine, as opposed to man-made institutions.

4. The applicant must convince the Board that he is sincere and has not rationalized his objections to the union on religious grounds after he was made aware of the provisions of the *Code*.

5. The Board must assess the probable consequences to the applicant if the application is not granted, including whether the applicant would be placed in such a conflict position if the application was denied that he would no longer be able to continue in his employment.

[28] The parties agree that the above criteria are the ones which the Board applies in determining applications under section 70(2) of the *Code*. While the Board has reviewed the decisions of the various Boards and Courts that were submitted by the parties, given the agreement of the parties on the criteria to be applied, it is not necessary to refer extensively to these other cases.

[29] As well, these cases turn almost entirely on the Board's assessment of the beliefs of the applicant in each case. These applications are difficult and unusual for the Board as they require the panel to assess the beliefs of the individual applicant and to make a judgement not only on whether the applicant's religious beliefs are genuine and sincerely held, but also whether they are religious in nature and incompatible with membership and/or payment of dues to a trade union. As the Board stated, "[r]eligion is such a personal matter and it is often difficult to gauge a person's sincerity. Often, the line between religious beliefs and moral, social or political views is blurred" (*Gordon* (1988), 74 di 84; and 3 CLRBR (2d) 245 (CLRB no. 695) at pages 90; and 251). This is why the Board normally holds a hearing on such applications, so that the Board may hear and see the applicant testify before it regarding the nature and sincerity of his religious beliefs.

[30] After hearing the evidence in this matter, the Board has concluded that while the applicant is a religious man who undoubtedly holds strong views on religion, including on the issue of abortion, he has not convinced the Board that he has met the fourth criterion, namely, that he has not rationalized his objections to unions on religious grounds after being made aware of the *Code* provisions.

[31] As indicated, for an application under section 70(2) to succeed, the objection must be to all trade unions and not one particular union. This means that the nature of the religious beliefs and the objection must be to trade unionism in general and the principles of collective bargaining, as opposed to the actions or activities of a particular trade union and/or its policies. As such, an objection to a union's policy or public stance on the abortion issue has been found to be too remote from the purposes and activities of a trade union and the role of a bargaining agent in the workplace to ground an exemption from union membership and payment of dues (*Doyle* (1993), 91 di 26; and 93 CLLC 16,028 (CLRB no. 990); and *Carroll*, June 23, 1989 (LD 731)).

[32] The applicant testified that the reasons why he now believes he cannot belong to any union are because he does not want to be "yoked" with non-believers in a common organization, and he does not agree with the concept of the union putting the employees' interests first ahead of or against those of the employer. However, the applicant indicated that these religious convictions or tenets have long been held by him, despite his having been a union member for several years and once before, many years ago. His religious convictions and union membership and payment of dues were not

incompatible for him in the past. He had never before sought exemption from paying dues or from membership. Rather, he described in his submissions his efforts to submit to the authority of the employer, while a union member. For example, he described how he would always try to cover a sick call or extend a shift when management asked, and would not complain when vacation requests were denied or file grievances about disparate working conditions. He also described how he opposed a strike due to his religious conviction that an employee should not refuse to do work that he has been hired to perform.

[33] Accordingly, these are not new aspects of his religion or his religious beliefs that have come to create a conflict for the applicant. Rather, he has long held such religious beliefs, yet previously found ways to be true to his religious convictions within a unionized environment and remain a dues paying union member.

[34] It is undisputed that the genesis of the applicant's first application to the ALRB for a religious exemption to the payment of union dues was his discovery that the union was actively supporting the pro-choice side on the issue of abortion. It is clear from the applicant's correspondence with the President of the union in June of 2012 that he has deeply-held views on this issue, and was very upset with the union for taking a position on the subject. The correspondence with the union also demonstrated that the applicant did not have an issue at the time with the union acting on behalf of the employees regarding workplace issues; in fact, his suggested solution was merely to have his local separate from the CAW.

[35] After being advised that he had filed the application in the wrong jurisdiction, the applicant filed his application with this Board in August of 2012. The application to the Board was very different. The applicant now sought an exemption from union membership as well as payment of union dues, and now stated that he was opposed to membership in any trade union. He attributed this change in his position to a progression of his religious views, resulting from some research he had done on religious and legal issues. Although this was a key part of the applicant's case, the details of this research were sparse.

[36] The only specific documents he spoke of, to account for the change in his application and the progression of his religious views, were the religious pamphlet from the Professor of Dogmatics referred to earlier, and the *Lavigne*, *supra* decision of the Supreme Court of Canada. However, the applicant testified that the pamphlet only confirmed the religious beliefs that he already held and that he was previously aware of the biblical passages that were quoted in the pamphlet. Thus, the only really new information and thus the real source of the progression in his religious beliefs and the significant change in the nature of the application filed before this Board from that filed with the ALRB, was that he learned from reading the *Lavigne*, *supra* case that unions had a legal right to take positions on social, political and moral issues.

[37] The Board has some difficulty accepting that the applicant's religious beliefs progressed over a three-week period of research to the point where his beliefs are no longer able to be reconciled with union membership. He has not convinced the Board that the union's public activities in support of the pro-choice movement, which go against his religious views, do not remain the true underlying cause of the applicant's objection to payment of union dues. Having then read the *Lavigne*, *supra* decision, and realizing that what he thought was improper activity on the part of trade unions is in fact legal and legitimate social activity, the applicant was undoubtedly upset and dismayed. However, the fact that he has learned that unions have more power, authority and legal rights than he initially thought, may make him less tolerant of certain union activity, especially their role within the public debate on social, political and moral issues. This does not, in the Board's view, fundamentally change the basic relationship between his religious convictions and the concept of trade unionism in general, a relationship that he was previously able to reconcile.

[38] It is evident from his application that, as part of the applicant's research, he looked into the Board's decisions on this issue and the criteria required by the Board in order to be successful in

making an application under section 70(2) of the *Code*. Even a cursory review of the Board's requirements would have been enough to show that an application for an exemption based solely on his disagreement with the union's policies on abortion would not likely have been successful. The result was that the applicant filed this much broader application. In the Board's view, the more probable explanation for the change in the two applications is that the applicant rationalized his religious beliefs in order to satisfy the Board's criteria to obtain an exemption from union membership and the payment of union dues pursuant to section 70(2) of the *Code*. This conclusion is supported by the fact that the church the applicant ultimately chose to become a member of, as representing the best fit for him in terms of similar beliefs, did not appear to have any policy regarding union membership or payment of union dues.

[39] The Board has been given considerable discretion in applying this provision of the *Code* and its authority to grant an exemption from union membership and paying union dues is not to be exercised lightly. This is because the desire to respect individual religious beliefs must be balanced against the legislative objectives of the *Code*. Parliament has recognized the need for union security as a means for a trade union to maintain its strength and solidarity, enabling it to more effectively represent its bargaining unit employees and press for better terms and conditions of employment. Dues check-off provisions are a recognition that those who benefit from the services and protection of a union and collective agreement should bear their fair share of the costs associated with those benefits. These principles should be over-ridden only in exceptional circumstances. This cautionary note was repeated in *Gordon, supra*, as follows:

> ...The mere fact that someone is deeply religious does not satisfy section 162(2) [now section 70(2)] of the *Code*. Parliament has, as a matter of public policy, enacted legislation permitting employers and trade unions to agree to provisions in collective agreements requiring persons to join trade unions as a condition of employment. The payment of union dues is also a benefit to society as a whole in the eyes of the legislators.
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> Accordingly, the Board must be extremely cautious that applicants who request exemption from these provisions in collective agreements truly qualify on the basis of their religious convictions.
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> (pages 87–88; and 248–249)

[40] And finally, the Board concluded:

> Taking everything into account, the Board does have serious doubts about the true foundation of Mr. Gordon's desires to opt out of union membership and from paying union dues to CUPW. The Board is of the view that when there are such doubts in the minds of the adjudicators, the doubt should be resolved in favour of the legislative plan adopted by Parliament. ...
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> (pages 91; and 252)

[41] In the present case, for the reasons expressed above, the Board has similar doubts about the true foundation of the applicant's desire to opt out of union membership and payment of union dues. The Board has not been satisfied that his reasons do not remain grounded in his objection, first to the CAW's public stance on the abortion issue and its commitment of resources toward the pro-choice movement, and then more generally to the prospect of continuing to pay dues to an organization that can, does and likely will continue to take public stances on social, political and moral issues that may conflict with his own. Realizing that this reasoning alone may not get him the exemption he was seeking, the applicant rationalized his religious views in an effort to meet the Board's criteria. Accordingly, the Board is not convinced that the applicant has met the requisite criteria or should

exercise its discretion to grant an exemption in this case. However, as noted in *Lavigne*, *supra* (page 281), payment of union dues does not inhibit a union member from expressing contrary views to those expressed by the union, and the expression of any views by the union is not "the voice of one and all in the bargaining unit."

[42] For the reasons as set out above, the Board hereby dismisses the application under section 70(2) of the *Code* for a religious exemption to union membership and payment of union dues.

III. The Scope of Reconsideration

[3] Section 18 of the *Code* provides the Board with discretion to review its decisions:

> 18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

[4] However, Parliament has also provided that Board decisions are intended to be final:

> 22. (1) Subject to this Part, every order or decision of the Board is final and shall not be questioned or reviewed in any court, except in accordance with the *Federal Courts Act* on the grounds referred to in paragraph 18.1(4)(*a*), (*b*) or (*e*) of that Act.
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> (1.1) The Board has standing to appear in proceedings referred to in subsection (1) for the purpose of making submissions regarding the standard of review to be used with respect to decisions of the Board and the Board's jurisdiction, policies and procedures.
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> (2) Except as permitted by subsection (1), no order, decision or proceeding of the Board made or carried on under or purporting to be made or carried on under this Part shall
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> (*a*) be questioned, reviewed, prohibited or restrained, or
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> (*b*) be made the subject of any proceedings in or any process of any court, whether by way of injunction, *certiorari*, prohibition, *quo warranto* or otherwise,
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> on any ground, including the ground that the order, decision or proceeding is beyond the jurisdiction of the Board to make or carry on or that, in the course of any proceeding, the Board for any reason exceeded or lost its jurisdiction.

[5] The finality of decisions is of considerable concern to the Board (*CanWest Pacific Television Inc. (CKVU)* (1991), 84 di 19 (CLRB no. 847)). Because finality is so important to the conduct of labour-management relations, reconsideration of Board decisions is the exception, rather than the rule (*Kies*, 2008 CIRB 413). The Board will generally not reconsider one of its decisions unless it is persuaded that:

1. the Board did not have the necessary jurisdiction to issue the decision or order;

2. the Board failed to respect a principle of natural justice;

3. the Board made an error of law or policy that casts serious doubt on its interpretation of the *Code*; or

4. facts exist that were not brought to the attention of the Board which, had they been known before the Board rendered the decision or order under reconsideration, would likely have caused the Board to arrive at a different conclusion.

[6] Reconsideration is not intended as a means for a party to appeal a decision or to re-argue the same case that was presented to another panel of the Board. It is not the role of a reconsideration panel to substitute its appreciation of the facts for that of the panel which rendered the decision (see *Williams* v. *Teamsters Local Union 938*, 2005 FCA 302). The applicant has the burden of proving that there are serious reasons, or even exceptional circumstances, that would justify the reconsideration of a decision (*591992BC Ltd.*, 2001 CIRB 140).

[7] In the instant case, the applicant alleges that the Board failed to respect the principles of natural justice and that its decision was erroneous in law. In *Kies*, *supra*, the Board set out the information that must be provided when such grounds for reconsideration are alleged:

> [21] In short, if an applicant alleges an error of law or policy, the application should, at a minimum, identify:
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> (i) The law or policy in issue;
> (ii) The precise error the original panel made in applying that law or policy; and
> (iii) How that alleged error casts serious doubt on the original panel's interpretation of the *Code*.
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> ...
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> [26] An applicant who alleges the original panel failed to respect a principle of natural justice should set out, at a minimum:
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> (i) the particular principle of natural justice or procedural fairness; and
> (ii) a description of how the original panel failed to respect that principle.
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> [27] A mere disagreement with the original panel's decision and a generic statement that the decision violated some undefined principle of "natural justice" does not justify reconsideration.

IV. Positions of the Parties

A. The Applicant

[8] The applicant alleges that the Board's decision should be reconsidered because:

> (a) the Board failed to respect the principles of natural justice, in that it based its decision on assumed facts and facts not in evidence;
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> (b) the Board's decision was erroneous in law, in that the Board misapplied the test to determine whether or not the applicant ought to have been granted the religious exemptions sought;
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> (c) the Board's decision was erroneous in law, in that the Board assumed the role of arbiter of religious dogma;
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> (d) the Board's decision was erroneous in law in that the Board failed to consider and follow the Supreme Court of Canada jurisprudence before it; and,
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> (e) the *BarkerMurray* [sic] test applied by the Board is not reflective of the legislature's intent.

[9] With respect to the first ground, the applicant submits that the only evidence before the Board consisted of the testimony of two witnesses and the applicant's documentary evidence. He submits that there was no evidence before the Board to suggest that his objection to union membership was fueled by the union's pro-choice stand on abortion, or that he had rationalized his religious beliefs after learning that his application had to be made to this Board rather than the Alberta Labour Relations Board (ALRB). The applicant alleges that, in reaching the conclusions that it did, the Board relied on assumed facts, or facts not in evidence.

[10] The applicant criticizes both the test applied by the Board, and the Board's application of that test. At the original hearing, the parties agreed that the principles set out in *Barker* (1986), 66 di 91; 13 CLRBR (NS) 28; and 86 CLLC 16,031 (CLRB no. 576) and amended in *Wiebe* (1987), 70 di 89; and 18 CLRBR (NS) 241; and 87 CLLC 16,032 (CLRB no. 632) constituted the appropriate test.

[11] However, the applicant now argues that this test misinterprets the *Code* and the intent of the legislature. He submits that it is sufficient that an applicant object to membership in a particular trade union, rather than to all trade unions and that by setting the first criteria of

the *Barker/Wiebe* test as it has, the Board has set the bar for the exemption provided in the *Code* too high.

[12] The applicant argues that the Board misapplied the fourth criteria of the test. He alleges that instead of considering whether the applicant's religious beliefs were sincere, the Board considered whether or not those beliefs prohibited him from being a member of a union or paying union dues. He also submits that the test does not require the Board to consider whether the applicant had rationalized his religious beliefs, but whether he had rationalized his objections to union membership and the payment of dues.

[13] The applicant submits that by evaluating his religious beliefs and considering whether those beliefs actually compelled or required him to abstain from union membership and payment of dues, the Board assumed the role of arbiter of religious dogma. He submits that this was not the Board's role, and that it was only required to determine whether his beliefs were sincere. He suggests that the Board overstepped its role by conducting an analysis of the legitimacy or theological soundness of his religious beliefs when it considered the fact that the church that he had joined did not have a policy or official position on union membership or the payment of dues.

[14] The applicant also submits that the Board failed to follow the dicta of the Supreme Court of Canada in *Syndicat Northcrest* v. *Amselem*, 2004 SCC 47 (*Amselem*), in which the Court stated that claimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively recognized as valid by other members of the same religion, nor is such an inquiry appropriate for the courts to make. He suggests that in view of this jurisprudence, the applicant was not required to prove the validity of his religious beliefs, only the sincerity of those beliefs. He submits that the Board's inquiry should have been limited to whether his beliefs were honest and in good faith, and not whether they were valid or mandated a particular course of action. Assessment of sincerity is a question of fact.

B. The Union

[15] The union's position is that the application is without merit and should be dismissed by the Board.

[16] The union points out that the evidence before the Board included a copy of the application that the applicant had originally filed with the ALRB, seeking an exemption from the payment of union dues on the basis that he could not contribute dues to an organization that publicly supported the pro-choice movement. At that time, the applicant was not seeking an exemption from union membership. There was also evidence that the applicant had written to the former President of the union, asking the union to publicly cease supporting the pro-choice movement.

[17] There was evidence that, during the three week period between the filing of the application with the ALRB and the one with this Board, the applicant engaged in legal research and became aware of the requirements to obtain an exemption under the *Code*. In his application to the Board, the applicant indicated that his religious beliefs were now in conflict with his being a member of any trade union. The union asserts that the evidentiary burden was on the applicant to convince the Board that he had not rationalized his objection to unions after becoming aware of the provisions in the *Code*. It submits that the applicant failed to account for the conflict between his religious beliefs and trade union membership that appeared to develop over this three week period. The applicant's evidence was that there had been no real change in the nature of his long held religious beliefs and that he had previously found ways to reconcile those beliefs with trade union membership.

[18] The union therefore argues that there was sufficient evidence before the Board to allow it to draw the inferences and reach the conclusions that it did and that there is no basis for the Board to interfere with the findings of the original panel.

[19] The union also argues that, contrary to the applicant's allegations, the Board made no errors of law. Since the time the *Barker/Wiebe* test was adopted in the federal jurisdiction in 1986 and despite the minor amendment in 1987, the Board has consistently applied the criteria that it set out in those decisions. The Board was entitled to weigh all of the evidence before it when determining whether the applicant had met his burden of persuading it of the true foundation for

his objection to union membership. The union argues that, in RD 696, the Board was consistent with its prior jurisprudence and committed no error of law.

[20] The union submits that the Board committed no error of law when it stated that the applicant's religious beliefs must be both sincere and incompatible with union membership. The Board was entitled to draw conclusions from the documentary evidence before it, which revealed that the applicant appreciated and respected the goals of trade unionism, such as obtaining fair and equitable treatment and that the first time he asserted that his religious beliefs prevented him from being a union member was when he learned of the provisions of the *Code*. These facts were weighed in relation to the Board's assessment of the applicant's sincerity, and ultimately his credibility.

[21] The union asserts that the Board did not fail to follow the principles set out by the Supreme Court of Canada in *Amselem, supra*, as these principles did not apply to the case before the Board. The issue before the Board was not whether union membership and the payment of union dues violated the applicant's freedom of religion, but whether the Board should exercise its discretion to grant him an exemption from the obligations contained in the collective agreement. A determination of the applicant's sincerity includes an objective inquiry into the nature of the applicant's beliefs, to determine whether the conflict in fact emanates from those religious beliefs.

[22] The union submits that the Board's analysis was consistent with the principles established in *Amselem, supra* with respect to inquiries into the sincerity of an applicant's belief, where sincerity is a fact in issue. The applicant's sincerity was a legitimate issue for the Board, given the disparity between his application to the ALRB and that to the Board, and the short time that separated the filing of the two applications. The applicant had no objection to union membership when he filed the application with the ALRB, but three weeks later he asserted to this Board that his religious beliefs prevented him from belonging to a union. The union submits that the Board made no error when, in assessing the applicant's claim, it found that he had provided very little detail to explain the dramatic progression of his beliefs over this short period of time. It suggests that the discretion afforded to the Board in section 70(2) requires the Board to exercise caution when considering applications for exemption, in order to ensure that the overall purposes of

the *Code* are not undermined. Inherent to the exercise of this discretion is the requirement that the Board utilize its judgment as to the sincerity of the beliefs being put forward, and where there is doubt, the application should be resolved in favour of the legislative plan adopted by Parliament.

[23] The union submits that the *Barker/Wiebe* test was carefully crafted with Parliament's intent in mind. It points out that *Barker*, *supra*, contains a lengthy overview of the origins of the legislation and its objectives. In the more than quarter century since this test was adopted, Parliament has not seen fit to amend the statutory language and must therefore be taken to be satisfied with the Board's interpretation and application of the *Code*.

V. Analysis and Decision

[24] The applicant in this matter has sought reconsideration of the decision in RD 696 on the grounds that the Board failed to respect the principles of natural justice by allegedly basing its decision on assumed facts and facts not in evidence; that the decision was erroneous in law as the Board misapplied the test to determine whether or not the applicant met the test for religious exemption; that the decision was erroneous in law in that the Board assumed the role of arbiter of religious dogma; that the decision was erroneous in law in that the Board failed to consider and follow the Supreme Court of Canada's jurisprudence; and that the *Barker/Wiebe* test is not reflective of the legislature's intent.

[25] The Board will deal with the five issues raised by the applicant as they were outlined in his application:

1. Did the Board base its decision on assumed facts and facts not in evidence?

[26] Having reviewed the evidence, the reconsideration panel is of the view that, in reaching the conclusion that it did in RD 696, the Board had evidence before it relating to the applicant's religious beliefs as they existed prior to his application to the ALRB, as well as those which he asserted as the basis for his application for exemption from the payment of union dues before this Board. The evidence before the Board was sufficient to allow it to draw conclusions and make the decision that it did. The Board finds that the decision was not made on assumed facts or facts not in evidence and therefore that there was no breach of natural justice.

2. Did the Board misapply the test to determine whether or not the applicant ought to have been granted the religious exemption?

[27] The Board's longstanding practice in cases involving religious exemption claims is to apply the test set out in *Barker*, *supra*, as modified by *Wiebe*, *supra*. The original panel correctly set out the *Barker/Wiebe* criteria at paragraph 27 of RD 696. Although the original panel made some *obiter* observations about religious concepts and their relation to membership in a trade union, its decision was based on the application of the *Barker/Wiebe* criteria. In particular, the Board determined that, on the basis of the evidence presented, it was not persuaded that the applicant had not rationalized his objection to unions after being made aware of the provisions of the *Code* and the Board's jurisprudence. The Board's opinion of the applicant's sincerity was buttressed by the evidence of the short period between his applications to the ALRB and this Board, and the change in the reasons for the respective applications. Given that the original panel heard *viva voce* testimony at an oral hearing, and reached a reasonable conclusion based on the evidence before it, the reconsideration panel must treat the original panel's findings with deference.

[28] In the reconsideration panel's view, on the basis of the evidence that was before it and its appreciation of that evidence, the original panel did not misapply the *Barker/Wiebe* test when it determined that the applicant did not qualify for an exemption on religious grounds. Consequently, the Board finds that there was no error of law or policy casting serious doubt on its interpretation of the *Code*.

3. Did the Board assume the role of arbiter of religious dogma?

[29] The applicant submits that the Board assumed the role of arbiter of religious dogma by evaluating his religious beliefs and considering whether those beliefs actually compelled or required him to abstain from union membership and payment of dues. He submits that this was not the Board's role, and that it was only required to determine whether his beliefs were sincere. He suggests that the Board overstepped its role by conducting an analysis of the legitimacy or theological soundness of his religious beliefs when it considered the fact that the church that he had joined did not have a policy or official position on union membership or the payment of dues.

[30] As noted above, the original panel did make a number of *obiter* comments in RD 696. The Board agrees that its role with respect to the fourth *Barker/Wiebe* criteria is to determine the sincerity of the applicant's belief and to satisfy itself that he has not rationalized his objections to unions. However, the onus is on the applicant to convince the Board and, in the instant case, the applicant failed to meet this burden. In the reconsideration panel's view, the original panel's reference to the fact that the church to which the applicant belongs does not have a policy or official position on union membership or the payment of dues was simply contextual and did not amount to assuming the role of arbiter of religious dogma.

[31] Accordingly, the Board finds no merit in the applicant's arguments and no error of law or policy that casts serious doubt on its interpretation of the *Code*.

4. Did the Board fail to consider and follow the Supreme Court of Canada's jurisprudence?

[32] The applicant submits that the Board failed to follow the dicta of the Supreme Court of Canada in *Amselem*, *supra*, in which the Court stated that claimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively recognized as valid by other members of the same religion, nor is such an inquiry appropriate for the courts to make.

[33] The application that the Board dealt with in RD 696 was based solely on section 70(2) of the *Code*. The issue before the Board was not whether union membership and the payment of union dues violated the applicant's freedom of religion, but whether the Board should exercise its discretion to grant him an exemption from the obligations contained in the collective agreement. Accordingly, the Board was not required to determine the validity of the applicant's beliefs, but his sincerity. Accordingly, the principles which the applicant asserts were not relevant to the matter that was before the Board, although the Board's analysis was consistent with those principles with respect to its inquiries into the sincerity of the applicant's beliefs. The applicant's sincerity was a legitimate issue for the Board, given the disparity between his application to the ALRB and the one he made to the Board, and the short time that separated the filing of the two applications.

[34] Accordingly, the Board finds that there is no conflict between RD 696 and the principles enunciated by the Supreme Court in *Amselem*, *supra*, and thus no error of law.

5. Is the *Barker/Wiebe* test reflective of the legislature's intent?

[35] The *Barker/Wiebe* test has been followed by the Board since 1986 and the applicant and the union agreed that this test was appropriate in the applicant's case. At no time during the proceedings before the original panel did the applicant raise any objection to the test prescribed in the Board's jurisprudence or allege that it is not reflective of the legislature's intent. As this issue could have been raised before the original panel and was not, it is not a proper ground for reconsideration.

[36] For all of these reasons, the applicant has not persuaded the Board that any grounds exist that would justify reconsideration of RD 696. As a result, this application for reconsideration is dismissed.

[37] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

Louise Fecteau
Vice-Chairperson

Patric F. Whyte
Vice-Chairperson